

to the '844 patent to make up for the deficiencies in Massiglia, asserting that the '844 patent teaches the concept of a controller generating mirror RAID sets and striping the mirror RAID sets.

The Action then concedes that Massiglia explicitly teaches that mirroring is performed by a lower Array Management Function, while striping is performed by an upper Array Management Function, and asserts that Massiglia suffers from the deficiency that failure of the lower Array Management Function would render Massiglia unable to control operation of the mirrored disks. The Action then asserts that one of skill in the art would have been motivated to combine Massiglia with the '069 patent "for the desirable purpose of improved reliability and flexibility." However, neither Massiglia nor the '844 patent recognize the particular deficiency identified in the Action or *any* deficiency in reliability and flexibility, much less propose a solution to a perceived deficiency or provide any motivation to combine Massiglia with the '844 patent to address this deficiency. Therefore, the motivation to combine cannot be derived from the references. Further, the action cites no specific reasons why one of skill in the art would combine Massiglia with the '844 patent. Both Massiglia and the '844 patent could be modified in myriad ways to "improve reliability and flexibility." The Action provides no specific motivation for combining the references.

**It Is Improper to Combine Massiglia with the '884 Patent Because Massaglia Teaches Away From their Combination**

MPEP § 2145 provides that it is improper to combine references where the references teach away from their combination. The Action concedes that Massiglia explicitly teaches that mirroring is performed by a lower Array Management Function, while striping is performed by a *separate*, upper Array Management Function. Thus, Massiglia explicitly teaches away from combining striping and mirroring in a single controller. Accordingly, Massiglia teaches away from the '884 patent, and therefore it is improper to combine

Massaglia with the '884 patent. See In re Grasselli, 713 F.3d 731; In re Fine, 837 F.2d 1071.

**The Cited References, Alone or in Combination, Neither Disclose Nor Suggest the Combination of Features in the Pending Claims**

More importantly, even if one were to combine Massigia with the '844 patent, the resulting combination would not yield the pending claims. Independent claims 1, 6, 8, and 13 recite that the front-end controller presents the striped arrays as a virtual volume. The Action presents no evidence that Massigia, alone or in combination with the '844 patent discloses or suggests that the front-end controller presents the striped arrays as a virtual volume. Therefore, Massigia, alone or in combination with the '844 patent, cannot render obvious these independent claims, or the claims that depend therefrom.

**Official Notice**

Applicant traverses each and every instance in which the Examiner has taken "Official Notice" and demands that the Examiner provide documentary evidence of the assertions presently supported by Official Notice. MPEP 2144.03

**Conclusion**

In view of all of the above, the pending claims are believed to be allowable and the case in condition for allowance which action is respectfully requested. Should the Examiner be of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is requested to contact Applicants' attorney at the telephone number listed below.

No fee is believed due for this submittal. However, any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

Respectfully submitted,

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Date



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